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**INDIANA UTILITY  
REGULATORY COMMISSION**

Mr. Joseph Sutherland  
Indiana Utility Regulatory Commission  
Office of the Clerk  
302 W. Washington Street – Suite E306  
Indianapolis, IN 46204

Re: **IURC Cause No. 41657**

Dear Mr. Sutherland:

Among the competitively vital issues being considered by the Indiana Utility Regulatory Commission ("Commission") in Cause No. 41657 is what remedy plan should be adopted for Ameritech Indiana. In a November 9, 2000 Entry, Commissioner Swanson-Hull and Administrative Law Judge Gray established guidelines applying to the remedy plans considered in this proceeding. The Commission ruled: "All plans will be evaluated primarily on their ability or inability to meet these guidelines". (Entry, p. 2).

Guideline 1 states: "Oversight of the remedy plan and the performance measures supporting the plan will ultimately rest with the IURC." Guideline 27 states: "The remedy plan and its associated penalties must be legally enforceable and under the control of the IURC." Finally, Guideline 28 states: "The remedy plan, including the accrual and payment of penalties, should take effect when the plan is approved by the IURC.

As the Commission is undoubtedly aware, the Michigan Public Service Commission ("MPSC") on April 17, 2001 adopted a remedy plan. The MPSC ruled that CLECs with interconnection agreements must amend their interconnection agreements to incorporate the remedy plan. The MPSC further ruled that Ameritech Michigan "shall enter into conforming interconnection agreements without delay". (MPSC Opinion and Order, pp. 16 and 20). This finding, of course, is not contemplated by Commission principle 28, but nevertheless was still proposed in this proceeding by Ameritech Indiana.

Ameritech Michigan recently provided to AT&T and McLeodUSA its proposal that purports to implement the MPSC's April 17, 2001 decision. The document is entitled:



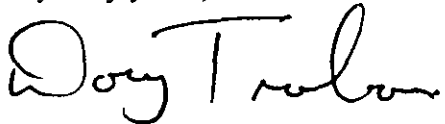
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“Appendix Performance Measurements” (“Appendix”). Section 1.6 of Ameritech Michigan’s Appendix provides in relevant part:

In the event that the state commission that approved this Agreement subsequently orders liquidated damages/remedies with respect to performance measures in a proceeding binding on both parties, the parties agree to incorporate commission-ordered liquidated damages/remedies into this Agreement once the decision approving such remedies *becomes final, non-modifiable, and any appeals are exhausted. The parties expressly reserve all of their rights to challenge any liquidated damage/remedy award, including but not limited to the right to oppose any such order and associated contract provision because remedy/liquidated damage provisions must be voluntarily agreed to and AM-MI does not at this time so agree.* (emphasis supplied)

AT&T and McLeodUSA request that the Commission take administrative notice of Ameritech Michigan’s “Appendix”. While this document is from Michigan, obviously it is directly relevant to Commission Guidelines 1, 27 and 28, and to one additional unspoken, but essential point: whether Ameritech Indiana intends to comply with the Commission’s decision.

Very truly yours,

A handwritten signature in black ink, appearing to read "Doug Trabaris". The signature is fluid and cursive, with the first name "Doug" and last name "Trabaris" clearly distinguishable.

Douglas W. Trabaris

DWT:jbc  
Attachments

cc: Service List

# **APPENDIX PERFORMANCE MEASUREMENTS**

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## APPENDIX PERFORMANCE MEASUREMENTS

### 1. INTRODUCTION

- 1.1 SBC Communications Inc. (SBC) means the holding company which owns the following ILECs: Illinois Bell Telephone Company, Indiana Bell Telephone Company Incorporated, Michigan Bell Telephone Company, Nevada Bell Telephone Company, The Ohio Bell Telephone Company, Pacific Bell Telephone Company, The Southern New England Telephone Company, Southwestern Bell Telephone Company and/or Wisconsin Bell, Inc. d/b/a Ameritech Wisconsin.
- 1.2 As used herein, **AM-MI** means the applicable above listed ILEC doing business in Michigan.
- 1.3 As used herein, **Service Bureau Provider** means a company which has been engaged by CLEC to act as its agent for purposes of accessing SBC-LEC's OSS application-to-application interfaces.
- 1.4 The performance measurements contained herein, notwithstanding any provisions in any other appendix in this Agreement, are not intended to create, modify or otherwise affect parties' rights and obligations with respect to OSS access. The existence of any particular performance measure, or the language describing that measure, is not evidence that CLEC is entitled to any particular manner of access, nor is it evidence that **AM-MI** is limited to providing any particular manner of access. The parties' rights and obligations to such access are defined elsewhere, including the relevant laws, FCC and PUC decisions/regulations, tariffs, and within this interconnection agreement.
- 1.5 Delays or other problems resulting from actions of a Service Bureau Provider acting as CLEC's agent for connection to SBC-LEC's OSS, including Service Bureau Provider provided processes, services, systems or connectivity shall be treated as excludable events.
- 1.6 Except as otherwise provided herein, the service performance measures ordered by the state Commission that approved this Agreement under Section 252(e) of the Act, including any subsequently Commission-ordered additions, modifications and/or deletions thereof, shall be posted on the SBC/Ameritech Internet site and incorporated into this Agreement by reference and shall supersede and supplant all performance measurements previously agreed to by the parties. In the event that the state commission that approved this Agreement subsequently orders liquidated damages/remedies with respect to performance measures in a proceeding binding on both parties, the parties agree to incorporate commission-ordered liquidated damages/remedies into this Agreement once the decision

approving such remedies becomes final, non-modifiable, and any appeals are exhausted. The parties expressly reserve all of their rights to challenge any liquidated damage/remedy award, including but not limited to the right to oppose any such order and associated contract provision because remedy/liquidated damage provisions must be voluntarily agreed to and AM-MI does not at this time so agree.

## **2. SOLE REMEDY**

- 2.1 These liquidated damages shall be the sole and exclusive remedy of CLEC for AM-MI's failure to meet specified performance measures and shall be in lieu of any other damages CLEC might otherwise seek for such breach through any claim or suit brought under any contract or tariff.

**SERVICE LIST**  
**CAUSE NO. 41657**

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